

REMARKS/ARGUMENTS

In view of the foregoing amendments and the following remarks, the applicant respectfully submits that the pending claims are not rendered obvious under 35 U.S.C. § 103. Accordingly, it is believed that this application is in condition for allowance. **If, however, the Examiner believes that there are any unresolved issues, or believes that some or all of the claims are not in condition for allowance, the applicant respectfully requests that the Examiner contact the undersigned to schedule a telephone Examiner Interview before issuing any further actions on the merits.**

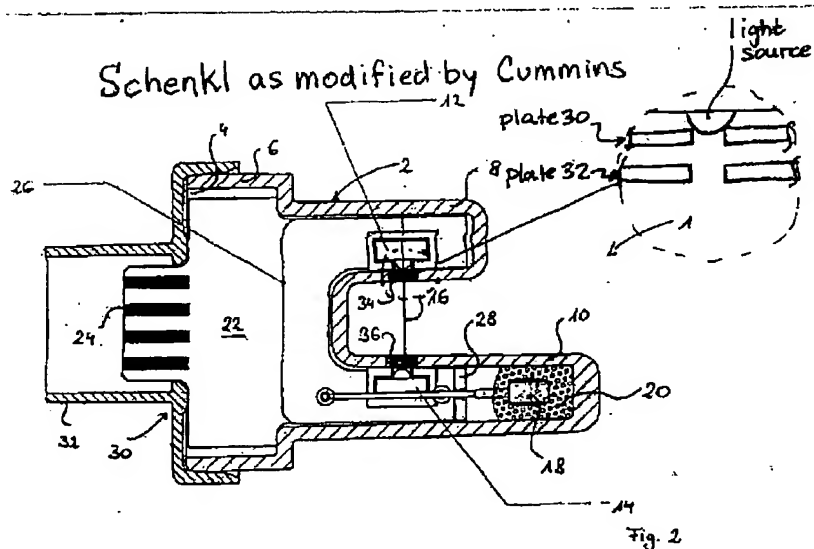
The applicant will now address each of the issues raised in the outstanding Office Action.

Rejections under 35 U.S.C. § 103

Claims 11-13, 15, 18, 21 and 27-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0142316 ("the Schenkl publication") in view of U.S. Patent No. 5,485,013 ("the Cummins patent"). The applicant respectfully requests that the Examiner reconsider and withdraw this ground of rejection in view of the following.

Independent claim 11, as amended, is not rendered obvious by the Schenkl publication in view of the Cummins patent at least because the Schenkl publication and Cummins patent, either taken alone or in combination, neither teach, nor make obvious, a sensor in which a

first diaphragm opening is arranged adjacent to, but spaced from, a transmitter and a second diaphragm opening is arranged adjacent to, but spaced from, a receiver in a beam path of the transmitter beam **such that the first and second diaphragms define a fluid spacing for the measurement beam passing therethrough for measuring the transmission properties of the fluid therebetween.** More specifically, if the Schenkl publication were modified by the Cummins patent as proposed by the Examiner, the result would look like this:



As can be seen, the first and second diaphragms (in plates 30 and 32) do not define a fluid spacing for the

measurement beam passing therethrough, for measuring the transmission properties of the fluid therebetween.

Thus, independent claim 11, as amended, is not rendered obvious by the Schenkl publication and the Cummins patent for at least the foregoing reason. Independent claims 12 and 13, as amended, are similarly not rendered obvious by the Schenkl publication and the Cummins patent. Since claims 15 and 29 depend from claim 11, since claims 18 and 30 depend from claim 12, and since claims 21, 27, 28 and 31 depend from claim 13, these claims are similarly not rendered obvious by these references.

In exemplary embodiments consistent with the claimed invention:

The transmitter diaphragm 14 and receiver diaphragm 16 are formed opposite each other in the diaphragm system 12. **The measurement beam 18 propagates starting from the transmitter diaphragm 14 through the fluid 20 to the receiver diaphragm 16 and passes through this.** [Emphasis added.]

(Page 17, lines 22-26 of the present application) The Examiner alleges that the plates 30 and 32 in FIGS. 4 and 5 of the Cummins patent correspond to the first and second diaphragms. (Paper No. 20080922, page 3) However, the light to be measured according to the Cummins patent passes **from** the **two plates** and is controlled and reduced "[b]y properly selecting the gap between the two plates and the size of the two apertures." (Abstract of the Cummins patent) By contrast, in the claimed invention a fluid spacing

between the *first and second diaphragm openings* in the diaphragm system induces the measurement beam (to be measured). Thus, including the two plates of the Cummins patent in the Schenkl device would not arrive at the exemplary embodiment consistent with the claimed invention.

Thus, to reiterate, independent claim 11, as amended, is not rendered obvious by the Schenkl publication and the Cummins patent for at least the foregoing reason. Independent claims 12 and 13, as amended, are similarly not rendered obvious by the Schenkl publication and the Cummins patent. Since claims 15 and 29 depend from claim 11, since claims 18 and 30 depend from claim 12, and since claims 21, 27, 28 and 31 depend from claim 13, these claims are similarly not rendered obvious by these references.

New Claims

New claim 32 depends from claim 11 and further recites that the first diaphragm opening is arranged closer to the transmitter than to the receiver and the second diaphragm opening is arranged closer to the receiver than to the transmitter. By contrast, both plates in FIG. 5 of the Cummins patent are arranged closer to the light source. Therefore, dependent claim 32 is not rendered obvious by the Schenkl publication and the Cummins patent for at least this additional reason.

New claim 33 depends from claim 11 and further recites that a distance between the first and second diaphragm opening is greater than either (A) a distance

between the first diaphragm opening and the transmitter and (B) a distance between a second diaphragm opening and the receiver. This further distinguishes the claimed invention from the combined sensor illustrated above.

New claim 34 depends from claim 11 and further recites that the diameter of the second diaphragm opening is smaller than the diameter of the first diaphragm opening. Conversely, new claim 35 depends from claim 11 and further recites that the diameter of the second diaphragm opening is larger than the diameter of the first diaphragm opening. These claims further distinguish the claimed invention from the combined sensor.

New claim 36 depends from claim 11 and further recites a housing configured to accommodate the transmitter, the receiver and the diaphragm system including the first diaphragm opening and the second diaphragm opening. This is illustrated, for example, by Figure 3 of the present application. The Cummins patent and the Schenkl publication do not teach, or make obvious, this feature. Thus, dependent claim 36 is not rendered obvious for at least this additional reason.

New claims 32-36 are supported by FIGS. 1 and 3 and by pages 16 and 20 of the present application. No new matter has been added.

Conclusion


In view of the foregoing amendments and remarks, the applicant respectfully submits that the pending claims are in condition for allowance. Accordingly, the applicant requests that the Examiner pass this application to issue.

Any arguments made in this amendment pertain **only** to the specific aspects of the invention **claimed**. Any claim amendments or cancellations, and any arguments, are made **without prejudice to, or disclaimer of**, the applicant's right to seek patent protection of any unclaimed (e.g., narrower, broader, different) subject matter, such as by way of a continuation or divisional patent application for example.

Since the applicant's remarks, amendments, and/or filings with respect to the Examiner's objections and/or rejections are sufficient to overcome these objections and/or rejections, the applicant's silence as to assertions by the Examiner in the Office Action and/or to certain facts or conclusions that may be implied by objections and/or rejections in the Office Action (such as, for example, whether a reference constitutes prior art, whether references have been properly combined or modified, whether dependent claims are separately patentable, etc.) is not a concession by the applicant that such assertions and/or implications are accurate, and that all requirements for an objection and/or a rejection have been met. Thus, the applicant reserves the right to analyze and dispute any such assertions and implications in the future.

Respectfully submitted,

January 26, 2009

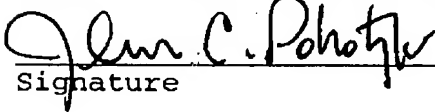

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January 26, 2009
Date